

. No. 54

NETHERLANDS AND PORTUGAL

Air transport Agreement (with annex). Signed at Lisbon, on 12 April 1946

Came into force on 12 April 1946 by signature.

Dutch, Portuguese and English official texts communicated by the Minister for Foreign Affairs of the Netherlands. The registration took place on 12 June 1947.

PAYS-BAS ET PORTUGAL

Accord relatif aux transports aériens (avec annexe). Signé à Lisbonne, le 12 avril 1946

Entrée en vigueur le 12 avril 1946 par signature.

Textes officiels néerlandais, portugais et anglais communiqués par le ministre des Affaires étrangères des Pays-Bas. L'enregistrement a eu lieu le 12 juin 1947.

No. 54. AIR TRANSPORT AGREEMENT BETWEEN PORTUGAL AND THE NETHERLANDS. SIGNED AT LISBON, ON 12 APRIL 1946

The Governments of Portugal and Netherlands, desiring to stimulate civil air transportation between Portuguese and Netherlands territories and having in mind the resolution signed under date of December 7th, 1944 at the International Civil Aviation Conference in Chicago, Illinois, U. S. A., for the adoption of a standard form of agreement for provisional air routes and services, hereby conclude the following agreement, covering the scheduled airline services between their respective territories, which shall be governed by the following provisions:

Article 1.

The contracting parties grant the rights specified in the Annex hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

Article 2.

(a) Each of the air services so described shall be placed in operation as soon as the contracting party to whom the right has been granted by Article 1 to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the right shall, subject to Article 7 hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that the airline so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this Agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such inauguration shall be subject to the approval of the competent military authorities.

(b) It is understood that any contracting party granted commercial rights under this Agreement should exercise them at the earliest practicable date except in the case of temporary inability to do so.

Article 3.

Operating rights which may have been granted previously by any of the contracting parties to any state not a party to this Agreement or to an airline shall continue in force according to their terms.

Article 4.

In order to prevent discriminatory practices and to assure equality of treatment, it is agreed that:

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of airports, and other facilities. Each of the contracting parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(b) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of the other contracting party shall be accorded national and most-favored-nation treatment with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered.

(c) Aircraft operated on the agreed services, supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of the contracting parties authorized to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even though such supply be used or consumed by such aircraft on flights in that territory.

(d) Goods so exempted may only be unloaded with the approval of the customs authorities of the other contracting party. These goods which are to be reexported shall be kept until reexportation under customs supervision.

Article 5.

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party shall be recognized as valid by the

other contracting party for the purpose of operating the routes and services described in the Annex. Each contracting party reserves the right, however, to refuse to recognise for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

Article 6.

(a) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other contracting party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that party.

(b) The laws and regulations of a contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that party.

Article 7.

Each contracting party reserves the right to withhold or revoke a certificate or permit to an airline of the other contracting party in any case where it is not satisfied, that substantial ownership and effective control are vested in nationals of either contracting party, or in case of failure of an airline to comply with the laws of the State over which it operates, as described in Article 6 hereof, or to perform its obligations under this Agreement.

Article 8.

This Agreement and all contracts connected therewith shall be registered with the Provisional International Civil Aviation Organization.

Article 9.

In the event either of the contracting parties consider it desirable to modify the routes or conditions set forth in the attached Annex, it may request consultation between the competent aeronautical authorities of both contracting parties, such consultation to begin within the period of 60 days from the date of the

request. When those authorities mutually agree on new or revised conditions affecting the Annex their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

Article 10.

Any dispute between the contracting parties relating to the interpretation or application of this Agreement or of the Annex thereto shall be referred for decision to the Interim Council in accordance with the provisions of Article III, section 6 (8) of the Interim Agreement on International Civil Aviation signed at Chicago on 7th December 1944, unless the contracting parties agree to settle the dispute by reference to an Arbitral Tribunal or to some other person or body appointed by agreement between the contracting parties. The contracting parties undertake to comply with the decision given.

Article 11.

If a general multilateral air Convention which is accepted by both contracting parties comes into force, the present Agreement shall be amended so as to conform with the provisions of the said Convention.

Article 12.

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve months after the date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other contracting party notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organization.

Article 13.

This Agreement will come into force on the day of signature.

DONE at Lisbon in triplicate in the Portuguese, Netherlands and English languages each of which will be of equal authenticity, this 12th day of April 1946.

For the Government of Portugal:

António de OLIVEIRA SALAZAR

For the Government of the Netherlands:

P. A. VAN BUTTINGHAM WICHERS

ANNEX

1. The airline(s) operating the air services on the routes specified in Schedule I to this Annex shall be designated by the Government of Portugal.

2. The airline(s) operating the air services on the routes specified in Schedule II to this Annex shall be designated by the Government of the Netherlands.

3. For the purpose of operating air services on the routes specified in Schedule I the designated Portuguese airline(s) referred to in Paragraph 1 above shall be accorded in Netherlands territory rights of transit and non-traffic stops as well as the right to pick up and discharge in international traffic passengers, cargo and mail as hereinafter provided, and the use on the said routes of aerodromes and ancillary facilities designated for international traffic.

4. For the purpose of operating air services on the routes specified in Schedule II the designated Netherlands airline(s) referred to in Paragraph 2 above shall be accorded in Portuguese territory rights of transit and non-traffic stops as well as the right to pick up and discharge in international traffic passengers, cargo and mail as hereinafter provided, and the use on the said routes of aerodromes and ancillary facilities designed for international traffic.

5. The air transport facilities available to the travelling public shall bear a close relationship to the requirements of the public for such transport.

6. There shall be a fair and equal opportunity for the airlines of the two nations to operate on any route between their respective territories covered by the Agreement and the Annex.

7. In the operation by the airlines of either Government of the trunk services described in Schedules I and II of this Annex, the interest of the airlines of the other Government shall be taken in consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

8. It is understood by both Governments that services provided by a designated airline under the Agreement and this Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services in international traffic passengers, cargo and mail destined for and coming from third countries at a point or points on the routes specified in this Annex shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

a) To traffic requirements between the country of origin and the countries of destination;

b) To the requirements of through airline operation; and

c) To the traffic requirements of the area through which the airline passes after taking account of local and regional services.

9. Should a route or part of a route as mentioned in Schedules I and II to this Annex be served by the airlines of both contracting parties, the airlines concerned shall consult with each other with a view to arrive at a form of cooperation on this route or part of such route.

Should a form of cooperation be agreed on, it shall be submitted for approval to the competent aeronautical authorities of the respective contracting parties.

10. For the purpose of paragraphs 8 and 9 of this Annex, the Netherlands Government formally recognises the very special nature of the air service between Portugal and Brazil, which will be considered as having the same character as the services mentioned in the last category of letter c) of paragraph 8.

11. The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airlines as well as the characteristics of each service.

12. Tariffs to be charged on routes or parts of a route operated by the airlines of both contracting parties shall be agreed in the first instance between these airlines. Any tariffs so agreed shall be subject to the approval of the aeronautical authorities of the respective contracting parties. In fixing these tariffs account shall be taken of the recommendations of the International Air Transport Association. In the event of disagreement between the airlines the contracting parties shall endeavour to reach agreement. In case such an agreement cannot be reached the procedure of Article 10 of the Agreement shall apply.

13. It is understood that this Agreement will not prevent either of the contracting parties to conclude arrangements of division of traffic with any of the countries covered by the routes mentioned in Schedules I and II.

SALAZAR

P. A. VAN BUTTINGHA WICHERS

SCHEDULE I.

*Portuguese routes terminating in/or traversing
Netherlands territory.*

1. Lisbon-Amsterdam and Amsterdam-Lisbon and to points beyond in both directions.
2. Lisbon-Madrid-Paris-Brussels-Amsterdam and Amsterdam-Brussels-Paris-Madrid-Lisbon and to points beyond in both directions.

The above mentioned routes may be altered after agreement between the competent aeronautical authorities of both contracting parties.

Note: With regard to the application by the Portuguese Government for the establishment of the routes Macau-Portuguese Timor (with or without intermediate landings in the Netherlands East Indies) and Portuguese Timor-Koepang, it is understood that this application requires the approval of the Government at the Netherlands East Indies. The Netherlands Government however undertakes the obligation of doing everything in its power in order that such approval be granted.

SCHEDULE II.

*Netherlands routes terminating in/or traversing
Portuguese territory.*

1. The Netherlands via the Western side of the Pyrenees to Lisbon and Lisbon via the Western side of the Pyrenees to the Netherlands either via intermediate points or directly.
2. The Netherlands to Lisbon via Geneva and Madrid (or Barcelona) and Lisbon to the Netherlands via Madrid (or Barcelona) and Geneva either via intermediate points or directly.
3. The Netherlands to the Netherlands territories in the Western hemisphere via Lisbon and probably Sal and the Netherlands territories in the Western hemisphere to the Netherlands either via Sal and Lisbon or via Lisbon, either via intermediate points or directly and to points beyond in both directions.
4. The Netherlands to South America via Lisbon (Casablanca), Dakar or Sal, Natal, Rio de Janeiro and South America to the Netherlands via Rio de Janeiro, Natal, Dakar or Sal (Casablanca), Lisbon and to points beyond in both directions.
5. The Netherlands to North America and/or the Netherlands territories in the Western hemisphere via the Azores and North America and/or the Netherlands territories in the Western Hemisphere to the Netherlands via the Azores either via intermediate points or directly and to points beyond in both directions.
6. The Netherlands to South Africa via Portuguese territory and vice-versa, the application to be submitted later on and the conditions to be fixed at the same time by both contracting parties.

The above mentioned routes may be altered after agreement between the competent aeronautical authorities of both contracting parties.

Note.—It is understood that the provision of article 4 of this Annex regarding the right to pick up and set down in international traffic passengers, cargo and mail, will not apply in regard to routes 1 and 2 on any points between Portugal and Spain. However, until (a) Portuguese airline(s) designated by the Government of Portugal starts (start) operating between Portugal and Spain, and provided there is no objection on the part of the Government of Spain, the airline(s) designated by the Government of the Netherlands will be allowed to pick up and set down in such international traffic passengers, cargo and mail between Portugal and Spain.